



General Assembly

January Session, 2005

Amendment

LCO No. 7496

SB0119407496SD0

Offered by:

SEN. MCDONALD, 27th Dist.

SEN. FREEDMAN, 26th Dist.

REP. KLARIDES, 114th Dist.

REP. STONE, 9th Dist.

REP. FARR, 19th Dist.

REP. CAFERO, 142nd Dist.

To: Subst. Senate Bill No. **1194**

File No. 567

Cal. No. 417

(As Amended by Senate Amendment Schedule "A")

**"AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY
RELATIONS MATTERS."**

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 46b-56 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2005*):

5 (a) In any controversy before the Superior Court as to the custody or
6 care of minor children, and at any time after the return day of any
7 complaint under section 46b-45, the court may [at any time] make or
8 modify any proper order regarding the [education and support of the
9 children and of care, custody and visitation] custody, care, education,
10 visitation and support of the children if it has jurisdiction under the
11 provisions of chapter 815p. Subject to the provisions of section 46b-56a,

12 as amended by this act, the court may assign [the custody of any child
13 to the parents jointly,] parental responsibility for raising the child to
14 the parents jointly, or may award custody to either parent or to a third
15 party, according to its best judgment upon the facts of the case and
16 subject to such conditions and limitations as it deems equitable. The
17 court may also make any order granting the right of visitation of any
18 child to a third party to the action, including, but not limited to,
19 grandparents.

20 (b) In making or modifying any order [with respect to custody or
21 visitation, the court shall (1) be guided by the best interests of the
22 child, giving consideration to the wishes of the child if the child is of
23 sufficient age and capable of forming an intelligent preference,
24 provided in making the initial order the court may take into
25 consideration the causes for dissolution of the marriage or legal
26 separation if such causes are relevant in a determination of the best
27 interests of the child, and (2) consider whether the party satisfactorily
28 completed participation in a parenting education program established
29 pursuant to section 46b-69b] as provided in subsection (a) of this
30 section, the rights and responsibilities of both parents shall be
31 considered and the court shall enter orders accordingly that serve the
32 best interests of the child and provide the child with the active and
33 consistent involvement of both parents commensurate with their
34 abilities and interests. Such orders may include, but shall not be
35 limited to: (1) Approval of a parental responsibility plan agreed to by
36 the parents pursuant to section 46b-56a, as amended by this act; (2) the
37 award of joint parental responsibility of a minor child to both parents,
38 which shall include (A) provisions for residential arrangements with
39 each parent in accordance with the needs of the child and the parents,
40 and (B) provisions for consultation between the parents and for the
41 making of major decisions regarding the child's health, education and
42 religious upbringing; (3) the award of sole custody to one parent with
43 appropriate parenting time for the noncustodial parent where sole
44 custody is in the best interests of the child; or (4) any other custody
45 arrangements as the court may determine to be in the best interests of

46 the child.

47 (c) In making or modifying any order as provided in subsections (a)
48 and (b) of this section, the court shall consider the best interests of the
49 child, and in doing so may consider, but shall not be limited to, one or
50 more of the following factors: (1) The temperament and developmental
51 needs of the child; (2) the capacity and the disposition of the parents to
52 understand and meet the needs of the child; (3) any relevant and
53 material information obtained from the child, including the informed
54 preferences of the child; (4) the wishes of the child's parents as to
55 custody; (5) the past and current interaction and relationship of the
56 child with each parent, the child's siblings and any other person who
57 may significantly affect the best interests of the child; (6) the
58 willingness and ability of each parent to facilitate and encourage such
59 continuing parent-child relationship between the child and the other
60 parent as is appropriate, including compliance with any court orders;
61 (7) any manipulation by or coercive behavior of the parents in an effort
62 to involve the child in the parents' dispute; (8) the ability of each
63 parent to be actively involved in the life of the child; (9) the child's
64 adjustment to his or her home, school and community environments;
65 (10) the length of time that the child has lived in a stable and
66 satisfactory environment and the desirability of maintaining continuity
67 in such environment, provided the court may consider favorably a
68 parent who voluntarily leaves the child's family home pendente lite in
69 order to alleviate stress in the household; (11) the stability of the child's
70 existing or proposed residences, or both; (12) the mental and physical
71 health of all individuals involved, except that a disability of a
72 proposed custodial parent or other party, in and of itself, shall not be
73 determinative of custody unless the proposed custodial arrangement is
74 not in the best interests of the child; (13) the child's cultural
75 background; (14) the effect on the child of the actions of an abuser, if
76 any domestic violence has occurred between the parents or between a
77 parent and another individual or the child; (15) whether the child or a
78 sibling of the child has been abused or neglected, as defined
79 respectively in section 46b-120; and (16) whether the party

80 satisfactorily completed participation in a parenting education
81 program established pursuant to section 46b-69b. The court is not
82 required to assign any weight to any of the factors that it considers.

83 (d) Upon the issuance of any order assigning custody of the child to
84 the Commissioner of Children and Families, or not later than sixty
85 days after the issuance of such order, the court shall make a
86 determination whether the Department of Children and Families made
87 reasonable efforts to keep the child with his or her parents prior to the
88 issuance of such order and, if such efforts were not made, whether
89 such reasonable efforts were not possible, taking into consideration the
90 [child's] best interests of the child, including the child's health and
91 safety.

92 [(c)] (e) In determining whether a child is in need of support and, if
93 in need, the respective abilities of the parents to provide support, the
94 court shall take into consideration all the factors enumerated in section
95 46b-84.

96 [(d)] (f) When the court is not sitting, any judge of the court may
97 make any order in the cause which the court might make under
98 [subsection (a) of] this section, including orders of injunction, prior to
99 any action in the cause by the court.

100 [(e)] (g) A parent not granted custody of a minor child shall not be
101 denied the right of access to the academic, medical, hospital or other
102 health records of such minor child, unless otherwise ordered by the
103 court for good cause shown.

104 [(f)] (h) Notwithstanding the provisions of [subsection] subsections
105 (b) and (c) of this section, when a motion for modification of custody
106 or visitation is pending before the court or has been decided by the
107 court and the investigation ordered by the court pursuant to section
108 46b-6 recommends psychiatric or psychological therapy for a child,
109 and such therapy would, in the court's opinion, be in the best interests
110 of the child and aid the child's response to a modification, the court
111 may order such therapy and reserve judgment on the motion for

112 modification.

113 [(g)] (i) As part of a decision concerning custody or visitation, the
114 court may order either parent or both of the parents and any child of
115 such parents to participate in counseling and drug or alcohol
116 screening, provided such participation is in the best [interest] interests
117 of the child.

118 Sec. 502. Section 46b-56a of the general statutes is repealed and the
119 following is substituted in lieu thereof (*Effective October 1, 2005*):

120 (a) For the purposes of this section, "joint custody" means an order
121 awarding legal custody of the minor child to both parents, providing
122 for joint decision-making by the parents and providing that physical
123 custody shall be shared by the parents in such a way as to assure the
124 child of continuing contact with both parents. The court may award
125 joint legal custody without awarding joint physical custody where the
126 parents have agreed to merely joint legal custody.

127 (b) There shall be a presumption, affecting the burden of proof, that
128 joint custody is in the best interests of a minor child where the parents
129 have agreed to an award of joint custody or so agree in open court at a
130 hearing for the purpose of determining the custody of the minor child
131 or children of the marriage. If the court declines to enter an order
132 awarding joint custody pursuant to this subsection, the court shall
133 state in its decision the reasons for denial of an award of joint custody.

134 (c) If only one parent seeks an order of joint custody upon a motion
135 duly made, the court may order both parties to submit to conciliation
136 at their own expense with the costs of such conciliation to be borne by
137 the parties as the court directs according to each party's ability to pay.

138 (d) In any proceeding before the Superior Court involving a dispute
139 between the parents of a minor child with respect to the custody, care,
140 education and upbringing of such child, the parents shall file with the
141 court, at such time and in such form as provided by rule of court, a
142 proposed parental responsibility plan that shall include, at a

143 minimum, the following: (1) A schedule of the physical residence of
144 the child during the year; (2) provisions allocating decision-making
145 authority to one or both parents regarding the child's health, education
146 and religious upbringing; (3) provisions for the resolution of future
147 disputes between the parents, including, where appropriate, the
148 involvement of a mental health professional or other parties to assist
149 the parents in reaching a developmentally appropriate resolution to
150 such disputes; (4) provisions for dealing with the parents' failure to
151 honor their responsibilities under the plan; (5) provisions for dealing
152 with the child's changing needs as the child grows and matures; and
153 (6) provisions for minimizing the child's exposure to harmful parental
154 conflict, encouraging the parents in appropriate circumstances to meet
155 their responsibilities through agreements, and protecting the best
156 interests of the child.

157 (e) The objectives of a parental responsibility plan under this section
158 are to provide for the child's physical care and emotional stability, to
159 provide for the child's changing needs as the child grows and to set
160 forth the authority and responsibility of each parent with respect to the
161 child.

162 (f) If both parents consent to a parental responsibility plan under
163 this section, such plan shall be approved by the court as the custodial
164 and access orders of the court pursuant to section 46b-56, as amended
165 by this act, unless the court finds that such plan as submitted and
166 agreed to is not in the best interests of the child.

167 (g) The court may modify any orders made under this section in
168 accordance with section 46b-56, as amended by this act.

169 Sec. 503. Section 46b-83 of the general statutes is repealed and the
170 following is substituted in lieu thereof (*Effective October 1, 2005*):

171 (a) At any time after the return day of a complaint under section
172 46b-45 or 46b-56, as amended by this act, or after filing an application
173 under section 46b-61, and after hearing, alimony and support pendente
174 lite may be awarded to either of the parties from the date of the filing

175 of an application therefor with the Superior Court. Full credit shall be
176 given for all sums paid to one party by the other from the date of the
177 filing of such a motion to the date of rendition of such order. In
178 making an order for alimony pendente lite, the court shall consider all
179 factors enumerated in section 46b-82, except the grounds for the
180 complaint or cross complaint, to be considered with respect to a
181 permanent award of alimony. In making an order for support
182 pendente lite, the court shall consider all factors enumerated in section
183 46b-84. The court may also award exclusive use of the family home or
184 any other dwelling unit which is available for use as a residence
185 pendente lite to either of the parties as is just and equitable without
186 regard to the respective interests of the parties in the property.

187 (b) In any proceeding brought under section 46b-45, 46b-56, as
188 amended by this act, or 46b-61 involving a minor child, if one of the
189 parents residing in the family home leaves such home voluntarily and
190 not subject to court order, and if the court finds that the voluntary
191 leaving of the family home by such parent served the best interests of
192 the child, the court may consider such voluntary leaving as a factor
193 when making or modifying any order pursuant to section 46b-56, as
194 amended by this act."